Remarks

Claims 1-51 are pending. Claims 26-51 are pending. Claims 1-21 are rejected.

Claims 20-21 are rejected under 35 U.S.C. 102(e) as being anticipated by Kondo et al. (US 2003/0178481). Claims 1-19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kondo in view of Braun (US Pat. No. 6,341,266). Claims 22-25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kondo.

Applicant's Attorney has amended claims 1 and 20. No new matter has been added. See, e.g., Figure 6.

With regard to amended claims 1 and 20, Braun fails to teach, disclose, or suggest the plant shipment time comprising a minimum and maximum time of travel between a cross dock location and the plant, the first cross dock shipment time comprising a minimum and maximum time of travel between the first supplier and the cross dock location, and the second cross dock shipment time comprising a minimum and maximum time of travel between the second supplier and the cross dock location. To the extent Examiner argues that such minimum and maximum time information is inherent to Braun, Examiner fails to carry the burden:

> In relying upon the theory of inherency, the examiner must provide a basis in fact and/or technical reasoning to reasonably support the determination that the allegedly inherent characteristic necessarily flows from the teachings of the applied prior art." Ex parte Levy, 17 USPQ2d 1461, 1464 (Bd. Pat. App. & Inter. 1990) (emphasis in original).
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> MPEP 2112.

Examiner provides no such basis in fact and/or technical reasoning. Furthermore, Braun teaches away from including such minimum and maximum time of travel information. The time between any two nodes of Figure 9, e.g., node 1 and node 3, is in terms of periods.

These periods do not have a minimum or maximum. See, col. 8, ll. 42-51. To find the shortest time between any two non-adjacent nodes, e.g., node 1 and node 4, the periods along all of the paths between the two non-adjacent nodes are counted. Col. 8, ll. 45-49. Modifying the periods of Braun to include minimums and maximums would render this method inoperable. The shortest time between any two non-adjacent nodes would no longer depend just on the path taken but also on the minimum and maximum of the periods between any two nodes. For example, one path may yield the shortest time if the maximum periods are considered, another path may yield the shortest time if the minimum periods are considered, while still another path may yield the shortest time if a mix of minimum and maximum periods are considered. Braun cannot handle such complexity.

With regard to claim 1, Kondo fails to teach, disclose, or suggest determining a first scheduled pickup time range and determining a second scheduled pickup time range. Examiner asserts that the "suppliers receive order requirements for anywhere up to three days, i.e., a range of time, before the supplies are needed as seen in ¶25." Office Action, January 5, 2007. Receiving order requirements, however, is not determining a pickup time range. To the extent Examiner argues that such ranges are inherent to Kondo, Examiner fails to carry the burden:

> In relying upon the theory of inherency, the examiner must provide a basis in fact and/or technical reasoning to reasonably support the determination that the allegedly inherent characteristic necessarily flows from the teachings of the applied prior art." Ex parte Levy, 17 USPQ2d 1461, 1464 (Bd. Pat. App. & Inter. 1990) (emphasis in original).
>
> MPEP 2112.

Examiner provides no such basis in fact and/or technical reasoning.

With regard to claim 1, Kondo fails to teach, disclose, or suggest delivering said combination of goods to said plant during said plant time range. Rather, Kondo indicates that "Because the staging is completed at the facility according to the assembly plant's needs as

indicated on a label, assembly plant space and manpower requirements are reduced, due to the fact that parts are delivered to the specific assembly plant at the specific time," [0017] (emphasis added); "The preparations include staging for delivery at a specific time and super cross-dock number for delivery to an assembly plant," [0031] (emphasis added).

With regard to claims 6, 7, 9, 10, 12, 19, and 22-25, Examiner improperly takes Official Notice of the state of the art:

> It would not be appropriate for the examiner to take official notice of facts without citing a prior art reference where the facts asserted to be well known are not capable of instant and unquestionable demonstration as being well-known. For example, assertions of technical facts in the areas of esoteric technology or specific knowledge of the prior art must always be supported by citation to some reference work recognized as standard in the pertinent art. In re Ahlert, 424 F.2d at 1091, 165 USPQ at 420-21. See also In re Grose, 592 F.2d 1161, 1167-68, 201 USPQ 57, 63 (CCPA 1979)
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> MPEP 2144.03

The dependent claims are patentable because they depend from one of the independent claims.

Please charge any fees or credit any overpayments as a result of the filing of this paper to Deposit Account No. 06-1510.

Respectfully submitted,

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Date: April 5, 2007

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